

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FREDERICK BRENNAN,

Plaintiff,

v.

Civil Action No. 11-0146
Judge David Stewart Cercone
Magistrate Judge Cynthia Reed Eddy

COMMONWEALTH OF PENNSYLVANIA,
OFFICER CLOUSE, OFFICER PANCHICK,
ARNOLD POLICE STATION,
WESTMORELAND COUNTY,
LAWRENCE KOENIG, ESQ.,

Defendants.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

For the reasons that follow, it is respectfully recommended that this case be dismissed with prejudice as to defendants Westmoreland County and Lawrence Koenig, Assistant District Attorney for Westmoreland County.

II. REPORT

Plaintiff Frederick Brennan named Westmoreland County and Lawrence Koenig as two of several defendants in his amended civil rights complaint. The Westmoreland County defendants have filed a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6), ECF No. 39, with Brief in Support, arguing that the Complaint is entirely devoid of any allegations about Westmoreland County's conduct or role in the alleged civil rights

violation, that to the extent Plaintiff is claiming his Sixth Amendment rights were violated by Mr. Koenig, such claims are barred under the doctrine of absolute prosecutorial immunity, and that, in any event, Plaintiff's claim that his speedy trial rights under Pennsylvania's Rule of Criminal Procedure 600 were violated do not state a claim pursuant to 42 U.S.C. § 1983.

By Order of November 29, 2011, ECF No. 41, Plaintiff was ordered to file a response or an Amended Complaint on or before December 30, 2011, which he has failed to do. Accordingly, it is recommended that the Court grant these defendants' unopposed motion to dismiss.¹

¹ Although the Court need not address the merits of defendants' motion to dismiss, the Court agrees that Mr. Koenig appears to have immunity and that nothing has been alleged with regard to Westmoreland County except Mr. Koenig's alleged violation of Plaintiff's Rule 600 rights.

III. CONCLUSION

For the reasons stated above, it is respectfully recommended that the claims against Westmoreland County and Lawrence Koenig be dismissed. Additionally, as it is clear that leave to amend would be futile, dismissal should be with prejudice. See Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004).

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72(D)(2) of the Local Rules for Magistrates Judges, Plaintiff is allowed until January 23, 2012, to file objections to this report and recommendation. Failure to file objections will waive the right to appeal. Brightwell v. Lehman, 637 F.3d 187, 193 n.7 (3d Cir. 2011).

Dated: January 5, 2012

s/Cynthia Reed Eddy
CYNTHIA REED EDDY
UNITED STATES MAGISTRATE JUDGE

cc:
Frederick Brennan
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